CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

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This issue contains:

U.S. Customs Service

T.D. 00–53 and 00–54

General Notices

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 00–53)

RETRACTION OF REVOCATION NOTICE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a published list of revoked Customs brokers licenses in the Federal Register.

Port	*Name*	*License Number*
Cleveland	David E. Morgan	15751
Cleveland	Robert J. McElroy	15740
Los Angeles	Sheung Yip Lee	12365
Dallas	Sandra L. Smith	14314
Houston	Wanda M. Jeffcoat	10307
Houston	Robert Bruce Warner	05531
Houston	Darrell J. Sekin, Sr.	03278
Houston	Jillian Macy	10982
Houston	D'Anne L. Brown	05575
Houston	Patrica L. Blasdel	05625
Houston	Michael W. Bruzga	06942
Houston	Paul Robert Goltz	05825
Houston	Pete Vela Fuentes	05866
Houston	Teresa Hendrix	13200
Houston	Laura Ann Lee	14469
Houston	Pamela Kay Brooke	06847
Houston	Gary L. Elkins	06986
Houston	Johnnie Hill	11077
Houston	Rodalfo Barraza	07398
Houston	Christina Schurig	12821
Houston	Judy Piercy	12266
Houston	Kenneth R. Mahand	06999
Houston	James R. Ewert, Jr.	07431
New Orleans	Karl Schneider	11853

The above licenses are valid.

Dated: August 7, 2000.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, August 17, 2000 (65 FR 50274)]

(T.D. 00–54)

CANCELLATION OF CUSTOMS BROKER LICENSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Brokers' licenses cancellations.

SUMMARY: I, as Assistant Commissioner of Customs, Office of Field Operations, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs brokers licenses due to the deaths of the license holders.

Port	*Name*	*License No.*
Nogales	Zoe E. Stittsworth	11816
Nogales	Russ Hamblin	15406
Nogales	Gilbert E. Partida	03550
Nogales	William F. Joffroy	05864
Laredo	Arthur Trust, Sr.	05652
New York	Martin Strauss	02701
New York	John H. Todd	03922
New York	Donna Carapezza	14124
New York	Douglas A. LaMonte	06892
New York	Howard H. Maslow	06453
Seattle	Albert G. Grasher	02709
San Francisco	Richard M. Short	02216
San Francisco	Rachel T. Chun	03573
Houston	Kirby Bentsen	05321
Detroit	Scott Brenner	16487

Dated: August 7, 2000.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, August 17, 2000 (65 FR 50275)]

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, August 16, 2000.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO COUNTRY OF ORIGIN MARKING OF CERTAIN WRISTWATCHES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of ruling letter and treatment relating to the country of origin marking of certain wristwatches.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 [19 U.S.C. 1625(c)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the country of origin marking of certain wristwatches and any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed modification.

DATE: Comments must be received on or before September 29, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the above address.

FOR FURTHER INFORMATION CONTACT: Richard Romero, Special Classification and Marking Branch at (202) 927–3648.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling pertaining to the country of origin marking of wristwatches. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) F86132, issued on May 12, 2000, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to modify any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not

identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY F86132, Customs ruled that the presence of the British flag on the face and clasp of wristwatches of Chinese origin may mislead or deceive the ultimate purchaser of the watches as to the actual origin of the product. Therefore, it was determined that the special marking requirements of section 134.46, Customs Regulations 19 CFR 134.46, are triggered. NY F86132, dated May 12, 2000, is set forth as "Attachment A" to this document. Since the issuance of that ruling, Customs has determined that the marking decision is in error. It is now Customs view that the Union Jack is not likely to cause the ultimate purchaser to conclude that the wristwatches are products of the United Kingdom. For this reason, in this instance we conclude that the Union Jack does not trigger the requirements of 19 CFR 134.46.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY F86132 to reflect that the presence of the Union Jack on the watch face and clasp does not trigger 19 CFR 134.46 pursuant to the analysis set forth in proposed Headquarters Ruling 561767, which is set forth as "Attachment B" to this document. The portion of NY F86132 pertaining to the requirements of Chapter 91, Additional U.S. Note 4, HTSUS, concerning marking of watch movements and cases remains intact. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Customs invites comments on the correctness of the proposed modification. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 16, 2000.

MYLES HARMON,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 17, 2000.

MAR–2 RR:NC:MM:114 F86132
Category: Marking

MR. JOHN B PELLEGRINI
ROSS & HARDIES
PARK AVENUE TOWER
65 East 55th Street
New York, NY 10022–3219

Re: The Country of Origin Marking of Watches.

DEAR MR. PELLEGRINI:

This is in response to your letters dated May 1, 2000 and April 13, 2000, on behalf of Reebok International, Ltd., requesting a ruling on the marking of a wrist watch for the purposes of 19 U.S.C. 1304 and the special marking requirements of Additional U.S. Note 4 to chapter 91 of the Harmonized Tariff Schedule of the United States. Two samples of the wrist watches and a plastic watch box were submitted with your letter and will be returned to you as requested.

The men's wrist watches, labeled style numbers 9RMLG and 9RBLG, are battery operated and contain quartz movements with analog displays. The watch cases are made of brushed metal and the bands are leather with a fabric lining. Style 9RMLG and 9RBLG are essentially the same, with the exception that style 9RBLG has a day and date feature.

One of the submitted samples, 9RMLG, is marked with a sticker label on the back of the watch case. You indicate in your letter that the imported watches will be marked in this manner. The sticker label is printed with the words "Made in China". There is a British flag located at three locations on the watch: on the dial of the watch, on the stainless steel closure of the watch band and on the outside back of the watch case. The outside back of the watch case also has the words "China Mov't" etched in the metal; you indicate that this marking will be removed.

Although you state that watch will be sold in a paperboard box, the submitted sample is packaged in a molded plastic watch box that is not covered with any other material. The watch box has a British flag printed on it in two places, on the top of the box and on the side panel. You state in your letter that at the time of importation, the watch box will have a sticker stating "Made in China" applied to the side panel of the box.

The marking statute, Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain.

The country of origin of a watch or clock is the country of manufacture of the watch or clock movement. The addition of the hands, dial, case, or watchband add definition to the time piece but do not change the character or use of the watch or clock movement which is the essential part of the watch or clock. In order to satisfy the requirements of 19 U.S.C 1304, a watch must be legibly marked with the name of the country of manufacture of the watch movement in a conspicuous place.

Section 134.43(b), Customs Regulations (19 CFR 134.43(b)), in conjunction with section 11.9, Customs Regulations (19 CFR 11.9), provides that watches must be marked in accordance with the special marking requirements set forth in Chapter 91, Additional U.S. Note 4 of the Harmonized Tariff Schedule of the United States (HTSUSA) (19 U.S.C. 1202). This note requires that any watch movement, or case provided for in the subpart, whether imported separately or attached to any article provided for in the subpart, shall not be permitted to be entered unless conspicuously and indelibly marked by cutting, die-sinking, engraving, stamping (including by means of indelible ink), or mold-marking (either indented or raised), as specified in the provisions of this note. This marking is

mandatory. The Customs Service has no authority for granting exceptions to the special marking requirements for watches.

Section (a) of Additional U.S. Note 4 requires that watch movements shall be marked on one or more of the bridges or top plates to show the manufacturer or purchaser; and, in words, the number of jewels, if any serving a mechanical purpose as frictional bearings. Section (c) of Additional U.S. Note 4 requires that watch cases shall be marked on the inside or outside of the back cover to show the name of the country of manufacture, and the name of the manufacturer or purchaser. The country of manufacture in these requirements refers to where the movements and cases are manufactured rather than where the watch was made. The special marking must be accomplished by one of the methods specified in the Additional U.S. Note 4, and using stickers is not an acceptable alternative.

Your letter indicates that the watch will be manufactured in China. The submitted sample of style 9RMLG has a paper sticker on the back of the case stating "Made in China". This would normally meet the requirement of 19 USC 1304 country of origin marking, however, the presence of the British flags on the watch invoke CR134.46.

The submitted samples have the British flag represented on various parts of the watch. The flag is stamped into the watch band's metal snap closure, it appears in the three colors, red, white and blue, on the dial of the watch, and it is stamped onto the outside back of the metal watch case. The flag also appears in two places on the plastic watch box. According to the information provided to this office, the British flag is not part of the Reebok trademark.

CR 134.46 requires that if the name of any city or locality in the U.S., or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appears on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such words, letter or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of"or other words of similar meaning. The purpose of this section is to prevent the possibility of misleading or deceiving the ultimate purchaser as to the actual origin of the imported good. The close proximity requirement has been interpreted to mean the same surface.

We believe that the presence of symbols associated with a country other than the country of origin of the watch would mislead the ultimate purchaser as to the country of origin of the watch. The British flag is more prominently displayed on the watch than the country of origin marking of the watch. In order to satisfy the statutory marking requirements, the watch must be marked "Made in China" in close proximity to the British flag on the front of the watch dial. Also the watch box must be marked "Made in China" in close proximity to the representations of the British flag.

The submitted sample of style 9RBLG, which has the case back removed, shows the marking "Prestige Time Co. Ltd.", Swiss Parts/Movement China" and "One 1 Jewel" printed in what appears to be indelible ink on the movement. The case back is marked on the outside of the back to show the name of the purchaser, which is Reebok. The case back is not marked with the name of the country of manufacture.

The wrist watch, as presented, does not meet the requirements of Additional U.S. Note 4 (c, i) which requires that the case be marked on the inside or outside of the back to show the name of the country of manufacture. Accordingly, the watch is not legally marked for the purposes of Additional U.S. Note 4 (c, 1) of chapter 91 of the Harmonized Tariff Schedule of the United States. You state in your letter that the origin of the case and the purchaser's name will be disclosed on the interior of the case at the time of importation. The marking must be accomplished using a method specified in Additional Note 4 to chapter 91, Harmonized Tariff Schedule.

This ruling is being issued under provision of Part 177 of the Customs Regulations (19 CFR Part 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Barbara Kiefer at 212–637–7058.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

RR:CR:SC 561767 RTR
Category: Marking

JOHN B. PELLEGRINI, ESQ.
ROSS & HARDIES
PARK AVENUE TOWER
65 East 55th Street
New York, NY 10022–3219

Re: Country of Origin Marking, Wristwatch; Union Jack Flag; 19 C.F.R. 134.46.

DEAR MR. PELLEGRINI:

This is in reference to your letter dated June 5, 2000, to the Director, Commercial Rulings Division, Office of Regulations & Rulings, on behalf of your client, Reebok International, Ltd., in which you request review of NY F86132, dated May 17, 2000. Specifically, you question Customs application of 19 C.F.R. §134.46 to the Union Jack insignia on wristwatches your client intends to import. Our response follows.

Facts:

According to your letter, your client will import a watch manufactured in the People's Republic of China. The watch has a quartz movement, an analog display and a leather band with a fabric lining and a metal clasp. The Union Jack is imprinted on the analog display, and is embossed on the clasp. The country of origin of the watch is indicated by a sticker that is applied to the back of the case.

On May 1, 2000, you requested a ruling from Customs on the marking of the watch described above, and on May 17, 2000 Customs issued NY F86132 in response. It was determined that the presence of the Union Jack on the clasp and watch face triggered 19 C.F.R. §134.46 because it may mislead or deceive the ultimate purchaser as to the actual origin of the product. On June 6, 2000, Customs received your request for administrative review.

Issue:

Whether 19 C.F.R. §134.46 is triggered by the presence of an insignia or symbol on an article that is commonly associated with a country different from the actual country of origin of the article.

Law and Analysis:

19 C.F.R. §134.46 addresses marking when the name of a country or locality other than country of origin appears on an article. It provides:

> In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. When it enacted 19 U.S.C. §1304, Congress intended that the ultimate purchaser should be able to determine by an inspection of the marking on the imported goods the country of origin. Part 134, Customs Regulations (19 C.F.R. Part 134), implements the country of origin marking requirements and exceptions to 19 U.S.C. §1304.

In order to protect the ultimate purchaser of a good from being mislead with regard to the country of origin of an imported article, 19 C.F.R. §134.46 provides that in any case in

which words may mislead or deceive the ultimate purchaser as to the actual country of origin, the name of the actual country of origin preceded by "Made in," "Product of," etc., must be inscribed in close proximity to the geographical reference.

Under Customs Regulation §134.46, the inquiry is whether or not the Union Jack on your client's watches could reasonably confuse the ultimate purchaser as to their country of origin.

Customs has held that, under certain conditions, non-origin geographical references appearing on imported articles do not trigger the requirements of 19 C.F.R. §134.46 if the context in which the symbols are used is such that confusion by the ultimate purchaser regarding country of origin is unlikely. See the following Headquarters Ruling Letters (HQ) for examples of words and symbols that did not trigger the special marking requirements of 19 CFR 134.46: HQ 561213 (February 16, 1999), concerning a patch sewn into the tongue of a shoe bearing the famous likeness of World War II U.S. Marines raising the U.S. flag at Iwo Jima; HQ 734783 (April 30, 1993), concerning the non-origin country flags and color references printed on soccer balls; HQ 733695 (January 15, 1991), concerning women's trousers with metal rivets die-stamped with the words "Bonjour Paris" and with a fabric label sewn into the waistband indicating the country of origin as Hong Kong; and HQ 733259 (August 3, 1990), concerning patches respectively indicating "St. Moritz", "Tahiti", "Rome", and "Alaska" sewn onto the front of a child's pullover knit top; HQ 732412 (August 29, 1989), concerning the words "Kansas" and "Kansas Jeans Navy Wear" on blue-jean pants.

Insofar as the Union Jack at issue here is employed as part of the trade dress of your client's product, it is analogous to the merchandise addressed in the foregoing rulings. That is, the decorative context in which it is used is not likely to cause the ultimate purchaser to conclude that the wristwatches are the products of the United Kingdom. For this reason, in this instance we conclude that the Union Jack does not trigger the requirements of 19 C.F.R. 134.46.

Holding:

NY F86132 is modified to reflect that the presence of the Union Jack on the watch face and clasp does not trigger 19 C.F.R. 134.46. The portion of NY F86132 pertaining to the requirements of Additional U.S. Note 4, Chapter 91, HTSUS, concerning marking of watch movements and cases remains intact. Identifying the country of origin by means of a paper sticker applied to the back of the watch case is not in accordance with the requirements of Additional U.S. Note 4.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF COENZYME Q_{10}

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letters and treatment relating to the classification of Coenzyme Q_{10}.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two ruling letters pertaining to the tariff classification of Coenzyme Q_{10} under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before September 29, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 927–2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise,

and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two rulings pertaining to the tariff classification of bulk importation of Coenzyme Q_{10}. Although in this notice Customs is specifically referring to Customs Headquarters ruling (HQ) 953627, dated July 26, 1993, and to New York ruling (NY) 864936, dated August 1, 1991, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importation of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importation of merchandise subsequent to this notice.

In both HQ 953627 and NY 864936, Customs ruled Coenzyme Q_{10} was classified in subheading 2914.69.20, HTSUS, as "* * * quinones * * * Other * * * Drug." HQ 953627 and NY 864936 are set forth as Attachments A and B, respectively.

It is now Customs position that while this substance is correctly classified in subheading 2914.69, HTSUS, as a quinone, it is not a drug. To be classifiable in subheading 2914.69.20, HTSUS, a substance must be for therapeutic or prophylactic use and chiefly used as medicines or as ingredients in medicines. Here, the item is a synthetic of a naturally occurring substance in the body that is marketed as a dietary supplement. It is not chiefly used as a medicine or ingredient in medicine. Thus, it is classified as "* * * quinones * * * Other * * * Other" in subheading 2914.69.90, HTSUS.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke both HQ 953627 and NY 864936, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters (HQ) 964415 and (HQ) 964416 (*see* Attachments C and D, respectively, to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 16, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 26, 1993.

CLA-2 CO:R:C:F 953627 EAB
Category: Classification
Tariff No. 2914.69.2000

AREA DIRECTOR, NEW YORK SEAPORT
U.S. CUSTOMS SERVICE
6 World Trade Center
New York, NY 10048

Re: Application for further review of Protest No. 1001-92-107065, dated November 24, 1992; ubidecarenone; coenzyme Q_{10}; quinones; enzymes; coenzymes; NYRL 864936.

DEAR AREA DIRECTOR:

This is a decision on a protest filed November 24, 1992, against your decision in the classification of merchandise entered on various dates in 1991 and 1992 and liquidated on October 9, 1992.

Facts:

The protestant entered the merchandise under subheading 3507.90.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), a provision for enzymes and prepared enzymes not elsewhere specified or included, other, dutiable at the column 1 general rate of 5 percent *ad valorem*.

Customs reclassified the merchandise under subheading 2914.69.2000, HTSUSA, a provision for quinones other than anthraquinone, drugs, dutiable at the column one general rate of 6.9 percent *ad valorem*.

The merchandise is one of a family of organic chemical compounds known predominantly as ubiquinones, but also called coenzymes Q, *The Merck Index Eleventh Edition*, 1549 (Merck #9751). Ubiquinone structures are based on the 2,3-dimethoxymethylbenzoquinone nucleus with a variable terpenoid side chain containing one to twelve mono-unsaturated *trans*-isoprenoid units with 10 units being the most common in animals. According to the existing dual system of nomenclature, the compounds can be described generically as either ubiquinone(x), where x is any multiple of 5 and designates the total number of carbon atoms in the side chain, or coenzyme Q_n, where n = 1-12 and designates

the number of terpenoid units in the side chain, *id*. In this case, the merchandise identified by the protestant as "ubidecarenone" contains 50 carbon atoms in the side chain, which itself consists of 10 terpenoid units, and is known also as ubiquinone(50) or coenzyme Q_{10}, respectively.

Issue:

Whether the substance ubidecarenone, also known as ubiquinone(50) and coenzyme Q_{10} is classified as a quinone under heading 2914 or as an enzyme under heading 3507.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRI's taken in order.

Explanatory Notes (Ens) to the Harmonized Commodity Description and Coding System represent the official interpretation of the Customs Cooperation Council on the scope of each heading, and, although neither binding upon the contracting parties to the Harmonized System Convention nor considered to be dispositive interpretations, they should be consulted on the proper scope of the System.

Enzymes are chemical compounds formed in the living cells of plants and animals. They are catalysts for the chemical reactions of biological processes such as photosynthesis and digestion. Enzymes that break down protein substrate are called "proteolytic." *See The Condensed Chemical Dictionary Ninth Edition,* Van Nostrand Reinhold, 342.

Coenzymes are also chemical compounds formed in the living cells of plants and animals. Specific coenzymes attach to specific proteins to form an active enzyme system. The term "coenzyme" is generally synonymous with the phrase "prosthetic group," *id.*, 220.

A prosthetic group is a chemical grouping in which a metal ion is associated with a large molecule or molecular complex. Such compounds activate metabolic mechanism by coordination reactions with amino acids, proteins, enzymes and nucleic acids, *id.*, 729.

It is clear from the scientific literature that a coenzyme is not an enzyme and, therefore, that ubidecarenone, a coenzyme, is not classifiable under heading 3507. The foregoing distinction is set forth in EN 35.07, and we note with particularity that if the subject coenzyme were combined with the appropriate enzyme, the resulting enzyme system would be classified under subheading 3507.90, HTSUSA. See EN 35.07(I)(b).

It is further clear from the scientific literature that ubidecarenone is a particular type of quinone known as ubiquinone(50). We are of the opinion, therefore, that ubidecarenone is classifiable under heading 2914. *See also* NY 864936 (August 1, 1991), ubiquinone(50) classified under subheading 2914.69.2000, HTSUSA.

Holding:

The protest should be denied.

The substance ubidecarenone, also known as ubiquinone(50) and coenzyme Q_{10} is classified under subheading 2914.69.2000, HTSUSA, a provision for ketones and quinones, whether or not with other oxygen function, quinones, other, drugs.

Merchandise entered in 1991 and 1992 under the foregoing provision was dutiable at the column one general rate of 6.9 percent *ad valorem*.

A copy of this decision should be attached to the Customs Form 19 and provided to the protestant as part of the notice of action on the protest.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, August 1, 1991.

CLA-2-29:S:N:N1:238 864936
Category: Classification
Tariff No. 2914.69.2000

MR. EDMUND J. CORBOY
AUSTIN CHEMICAL COMPANY, INC.
9655 West Bryn Mawr Avenue
Rosemont, IL 60018-5299

Re: The tariff classification of a drug, Co-Enzyme Q10 (Ubiquinone 50), in bulk form from Japan.

DEAR MR. CORBOY:

In your letter dated June 26, 1991 you requested a tariff classification ruling.

Co-Enzyme Q10 (Ubiquinone 50) is a quinone compound used as a cardiovascular drug or as a pharmaceutical intermediate.

The applicable subheading for the Co-Enzyme Q10 will be 2914.69.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for other quinone drugs. The rate of duty will be 6.9 percent ad valorem.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964415 AM
Category: Classification
Tariff No. 2914.69.90

MR. EDMUND J. CORBOY
AUSTIN CHEMICAL COMPANY, INC.
9655 West Bryn Mawr Avenue
Rosemont, IL 60018-5299

Re: HQ 953627 and NY 864936 revoked; "Coenzyme Q_{10}".

DEAR MR. CORBOY:

This is in reference to NY 864936 issued to you on August 1, 1991, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Coenzyme Q_{10}.

We have reviewed the decision in NY 864936, as well as the decision in HQ 953627, issued on July 26, 1993, and have determined that the classification set forth in those rulings for Coenzyme Q_{10} is in error. This ruling revokes NY 864936. HQ 953627 is revoked by HQ 964416 of this date.

Facts:

Coenzyme Q_{10}, also known as Ubiquinone 50 and ubidecarenone, has the chemical structure $C_{59}H_{90}O_4$, and the chemical name 2-(3, 7, 11, 15, 19, 23, 27, 31, 35, 39-decamethyl-2, 6, 10, 14, 18, 22, 30, 34, 38-tetracontadecaenyl)-5, 6-dimethoxy-3-methyl-1, 4-benzoquinone. Ubidecarenone has a CAS registry # 303–98–0 and is listed in Table 1 to the Pharmaceutical Appendix to the Tariff Schedule. It is imported in bulk as a yellow to orange crystalline powder.

According to the Merck Index, Twelfth Edition, Coenzyme Q_{10} is one of a family of organic chemical compounds known predominantly as ubiquinones, but also called coenzymes Q. Ubiquinone structures are based on the 2,3-dimethoxy-5-methylbenzo-quinone nucleus with a variable terpenoid side chain containing one to twelve mono-unsaturated trans-isoprenoid units with 10 units being the most common in animals. According to the existing dual system of nomenclature, the compounds can be described as coenzyme Q_n, where n = 1–12 and represents the number of terpenoid units in the side chain or ubiquinone (x), where x is any multiple of 5 and designates the total number of carbon atoms in the side chain. Differences in properties are due to the difference in the length of the side chain. Naturally occurring members are the coenzymes Q_6–Q_{10}. The entire series has been prepared synthetically. The Merck Index, Twelfth Edition, 1679 (Merck #9974).

Merck also assigns a therapeutic category of "Cardiotonic" to Coenzyme Q_{10}. The Explanatory Notes of the Merck Index state:

> ***Therapeutic Category and Therapeutic Category (Veterinary).*** In most cases, therapeutic categories correspond to those published in the *USP Dictionary of USAN and International Drug Names*. However, in instances where there is no listing, or where the USAN Council has listed a mechanism of action, a therapeutic category has been assigned which most closely describes the indication claimed by the manufacturer, or reported in the clinical literature. When available, mode of action information is included in the literature references section of the monograph. Monographs for human drugs have been indexed by both therapeutic category and biological activity beginning on page THER–1. Id. at xi.

Coenzyme Q_{10}, ubiquinone or ubidecarenone are not listed in the Therapeutic Category and Biological Activity Index (THER–1 and following). Moreover, in the 1998 edition of the *USP Dictionary of USAN and International Drug Names*, the "Ubidecarenone" listing does not contain a description of a "therapeutic category" or "mechanism of action."

Ubiquinone has recently been designated as an Orphan Product by the Food and Drug Administration (FDA) (*see* "List of Orphan Product Designations for December 1999") as a substance used in the "treatment of mitochondrial cytopathies." To this date, however, a marketing date has not been assigned. Atovaquone, an analog of ubiquinone, has been approved for marketing as an Orphan Drug in the treatment of *Pneumocystis carinii*, an opportunistic infection most commonly affecting people with AIDS. However, an analog of a substance is not the substance itself. Moreover, The Orphan Drug Act (21 U.S.C. 360, *et seq.*) defines Orphan products as ones used to treat diseases or conditions affecting fewer than 200,000 persons in the United States. Such small patient populations reduce profit potential for sponsors, so the Act grants special privileges and marketing incentives.

Issue:

Whether "ubiquinone or Coenzyme Q_{10}" imported as a yellow to orange crystalline powder is classified in subheading 2914.69.20, HTSUS, as "* * * quinones * * * Other * * * Drug," or in subheading 2914.69.90, HTSUS, as "* * * quinones * * * Other * * * Other."

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or le-

gally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. *See*, T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The following headings are relevant to the classification of this product:

2914	Ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated, or nitrosated derivatives (con.):
* * * * * * *	
2914.69	Other:
2914.69.2000	Drugs
* * * * * * *	
2914.69.9000	Other

In both HQ 953627 and NY 864936, this merchandise was classified in subheading 2914.69.20, HTSUS, due to the erroneous assumption that it has therapeutic properties as a cardiovascular drug or pharmaceutical intermediate. Chapter 29 of the HTSUS, with exceptions inapplicable here, provides only for "[s]eparate chemically defined organic compounds, whether or not containing impurities." Note 1(a), Chapter 29, HTSUS. Hence, the instant merchandise, an unmixed compound, imported in bulk for incorporation within pharmaceutical or other products, is appropriately classified in Chapter 29, HTSUS.

However, the "drugs" provisions of Chapter 29 have a specific meaning as enunciated in *Lonza, Inc. v. U.S.*, 46 F.3d 1098 (Fed. Cir. 1995). The first part of the *Lonza* test requires that a substance have "therapeutic or medicinal" properties. "Therapeutic" and "medicinal" have been judicially construed to mean "[h]aving healing or curative powers" and "curing, healing, or relieving," respectively. The second requirement for classification as "drugs" under *Lonza* is that substances be "chiefly used as medicines or as ingredients in medicines." The phrase "chiefly used" indicates that classification as a drug depends upon principal use. "[A] tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation * * *." Additional U.S. Rule of Interpretation 1(a), HTSUS. (See also "Guidance Concerning the Tariff Classification of Pharmaceutical Products Imported for Clinical Research," May 24, 2000, CUSTOMS BULLETIN, Vol. 34, No. 21.)

These goods are not chiefly imported for pharmaceutical research or therapeutic treatment. The therapeutic category assigned to ubiquinone in the Merck Index is not dispositive. This category was most probably assigned according to the information "reported in the clinical literature." While a large amount of material published in the scientific literature indicates that Coenzyme Q_{10} possesses medicinal properties, we were unable to locate any reference to Coenzyme Q_{10} which would lead us to believe that it is principally used as a medicine or as an ingredient in a medicine.

Even though the substance has recently been designated an Orphan product, this is not sufficient to classify the substance under the drug provisions of the HTSUS for tariff purposes. By definition, Orphan drugs are useful to less than 200,000 people in this country. Furthermore, ubiquinone is not presently marketed, even as an Orphan drug, for treatment of mytochondrial cytopathies, or any other known condition or disease. Instead, the substance is marketed as a dietary supplement in compliance with the Dietary Supplement Health and Education Act of 1994 containing the legally required disclaimer that "the product is not intended to diagnose, treat, cure or prevent any disease." It therefore can not be argued that Coenzyme Q_{10} is principally used as a therapeutic substance "having healing or curative powers."

Nor can it be argued that inclusion in the Pharmaceutical Appendix of the HTSUS automatically imbues a substance with therapeutic properties. The Pharmaceutical Appendix was incorporated into the HTSUS by Presidential Proclamation. *See* Proclamation No. 6763, 60 Fed. Reg. 1007 (1994). This Proclamation also added General Note 13 to the HTSUS. General Note 13 states that whenever a rate of duty of "Free" followed by the symbol "K" in parentheses appears in the "Special" column for a tariff provision, products classifiable in such provision shall be entered free of duty, provided that such product is listed in the Pharmaceutical Appendix.

The Pharmaceutical Appendix does not broaden or narrow the scope of the "drugs" provisions. There are 54 eight-digit "drugs" provisions within Chapter 29, HTSUS, which are subject to duty. Each of these provisions has a "K" in the "Special" column, indicating that

drugs, which are included in the Pharmaceutical Appendix, are duty-free while drugs not included in the Pharmaceutical Appendix are subject to duty.

The statement of administrative action and subsequent presidential proclamations (adding items to the Pharmaceutical Appendix) indicate that inclusion within the Pharmaceutical Appendix is the means by which duty-free treatment is to be extended to new pharmaceuticals. A product need not be considered a "drug" in order to be included in the Pharmaceutical Appendix. In fact, a "K" appears in the "Special" column adjacent to subheading 2914.69.90, HTSUS, the non-drug provision considered here.

Holding:

Coenzyme Q_{10} is classified in subheading, 2914.69.90, HTSUS, as "* * * quinones * * * Other * * * Other." This ruling revokes NY 864936, dated August 1, 1991. HQ 964416 revokes HQ 953627, dated July 26, 1993.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 964416 AM
Category: Classification
Tariff No. 2914.69.90

LAWRENCE D. BLUME
GRAHAM & JAMES
2000 M St., N.W., #700
Washington, DC 20036

Re: HQ 953627 and NY 864936 revoked; "Coenzyme Q_{10}".

DEAR MR. BLUME:

This is in reference to HQ 953627 issued by this office on July 26, 1993, in response to protest #1001–92–107065, which you filed on behalf of Kyowa Hakko USA Corp., concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Coenzyme Q_{10}.

We have reviewed the decision in HQ 953627, as well as the decision in NY 864936, issued on August 1, 1991, and have determined that the classification set forth in those rulings for Coenzyme Q_{10} is in error. This ruling revokes HQ 953627. NY 864936 is revoked by HQ 964415 of this date.

Facts:

Coenzyme Q_{10}, also known as Ubiquinone 50 and ubidecarenone, has the chemical structure $C_{59}H_{90}O_4$, and the chemical name 2-(3, 7, 11, 15, 19, 23, 27, 31, 35, 39-decamethyl-2, 6, 10, 14, 18, 22, 30, 34, 38-tetracontadecaenyl)-5, 6-dimethoxy-3-methyl-1, 4-benzoquinone. Ubidecarenone has a CAS registry # 303–98–0 and is listed in Table 1 to the Pharmaceutical Appendix to the Tariff Schedule. It is imported in bulk as a yellow to orange crystalline powder.

According to the Merck Index, Twelfth Edition, Coenzyme Q_{10} is one of a family of organic chemical compounds known predominantly as ubiquinones, but also called coenzymes Q. Ubiquinone structures are based on the 2,3-dimethoxy-5-methylbenzo-quinone nucleus with a variable terpenoid side chain containing one to twelve mono-unsaturated trans-isoprenoid units with 10 units being the most common in animals. According to the existing dual system of nomenclature, the compounds can be described as coenzyme Q_n, where n = 1–12 and represents the number of terpenoid units in the side chain or ubiquinone (x), where x is any multiple of 5 and designates the total number of carbon atoms in the side chain. Differences in properties are due to the difference in the length of the side

chain. Naturally occurring members are the coenzymes Q_6–Q_{10}. The entire series has been prepared synthetically. The Merck Index, Twelfth Edition, 1679 (Merck #9974).

Merck also assigns a therapeutic category of "Cardiotonic" to Coenzyme Q_{10}. The Explanatory Notes of the Merck Index state:

> ***Therapeutic Category and Therapeutic Category (Veterinary).*** In most cases, therapeutic categories correspond to those published in the *USP Dictionary of USAN and International Drug Names*. However, in instances where there is no listing, or where the USAN Council has listed a mechanism of action, a therapeutic category has been assigned which most closely describes the indication claimed by the manufacturer, or reported in the clinical literature. When available, mode of action information is included in the literature references section of the monograph. Monographs for human drugs have been indexed by both therapeutic category and biological activity beginning on page THER–1. Id. at xi.

Coenzyme Q_{10}, ubiquinone or ubidecarenone are not listed in the Therapeutic Category and Biological Activity Index (THER–1 and following). Moreover, in the 1998 edition of the *USP Dictionary of USAN and International Drug Names*, the "Ubidecarenone" listing does not contain a description of a "therapeutic category" or "mechanism of action."

Ubiquinone has recently been designated as an Orphan Product by the Food and Drug Administration (FDA) (*see* "List of Orphan Product Designations for December 1999") as a substance used in the "treatment of mitochondrial cytopathies." To this date, however, a marketing date has not been assigned. Atovaquone, an analog of ubiquinone, has been approved for marketing as an Orphan Drug in the treatment of *Pneumocystis carinii*, an opportunistic infection most commonly affecting people with AIDS. However, an analog of a substance is not the substance itself. Moreover, The Orphan Drug Act (21 U.S.C. 360, *et seq.*) defines Orphan products as ones used to treat diseases or conditions affecting fewer than 200,000 persons in the United States. Such small patient populations reduce profit potential for sponsors, so the Act grants special privileges and marketing incentives.

Issue:

Whether "ubiquinone or Coenzyme Q_{10}" imported as a yellow to orange crystalline powder is classified in subheading 2914.69.20, HTSUS, as "* * * quinones * * * Other * * * Drug," or in subheading 2914.69.90, HTSUS, as "* * * quinones * * * Other * * * Other."

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. *See*, T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The following headings are relevant to the classification of this product:

2914	Ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated, or nitrosated derivatives (con.):
* * * * * * *	
2914.69	Other:
2914.69.2000	Drugs
* * * * * * *	
2914.69.9000	Other

In both HQ 953627 and NY 864936, this merchandise was classified in subheading 2914.69.20, HTSUS, due to the erroneous assumption that it has therapeutic properties

as a cardiovascular drug or pharmaceutical intermediate. Chapter 29 of the HTSUS, with exceptions inapplicable here, provides only for "[s]eparate chemically defined organic compounds, whether or not containing impurities." Note 1(a), Chapter 29, HTSUS. Hence, the instant merchandise, an unmixed compound, imported in bulk for incorporation within pharmaceutical or other products, is appropriately classified in Chapter 29, HTSUS.

However, the "drugs" provisions of Chapter 29 have a specific meaning as enunciated in *Lonza, Inc. v. U.S.*, 46 F.3d 1098 (Fed. Cir. 1995). The first part of the *Lonza* test requires that a substance have "therapeutic or medicinal" properties. "Therapeutic" and "medicinal" have been judicially construed to mean "[h]aving healing or curative powers" and "curing, healing, or relieving," respectively. The second requirement for classification as "drugs" under *Lonza* is that substances be "chiefly used as medicines or as ingredients in medicines." The phrase "chiefly used" indicates that classification as a drug depends upon principal use. "[A] tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation * * *." Additional U.S. Rule of Interpretation 1(a), HTSUS. (See also "Guidance Concerning the Tariff Classification of Pharmaceutical Products Imported for Clinical Research," May 24, 2000, CUSTOMS BULLETIN, Vol. 34, No. 21.)

These goods are not chiefly imported for pharmaceutical research or therapeutic treatment. The therapeutic category assigned to ubiquinone in the Merck Index is not dispositive. This category was most probably assigned according to the information "reported in the clinical literature." While a large amount of material published in the scientific literature indicates that Coenzyme Q_{10} possesses medicinal properties, we were unable to locate any reference to Coenzyme Q_{10} which would lead us to believe that it is used as a medicine or as an ingredient in a medicine.

Even though the substance has recently been designated an Orphan product, this is not sufficient to classify the substance under the drug provisions of the HTSUS for tariff purposes. By definition, Orphan drugs are useful to less than 200,000 people in this country. Furthermore, ubiquinone is not presently marketed, even as an Orphan drug, for treatment of mytochondrial cytopathies, or any other known condition or disease. Instead, the substance is marketed as a dietary supplement in compliance with the Dietary Supplement Health and Education Act of 1994 containing the legally required disclaimer that "the product is not intended to diagnose, treat, cure or prevent any disease." It therefore can not be argued that Coenzyme Q_{10} is principally used as a therapeutic substance "having healing or curative powers."

Nor can it be argued that inclusion in the Pharmaceutical Appendix of the HTSUS automatically imbues a substance with therapeutic properties. The Pharmaceutical Appendix was incorporated into the HTSUS by Presidential Proclamation. *See* Proclamation No. 6763, 60 Fed. Reg. 1007 (1994). This Proclamation also added General Note 13 to the HTSUS. General Note 13 states that whenever a rate of duty of "Free" followed by the symbol "K" in parentheses appears in the "Special" column for a tariff provision, products classifiable in such provision shall be entered free of duty, provided that such product is listed in the Pharmaceutical Appendix.

The Pharmaceutical Appendix does not broaden or narrow the scope of the "drugs" provisions. There are 54 eight-digit "drugs" provisions within Chapter 29, HTSUS, which are subject to duty. Each of these provisions has a "K" in the "Special" column, indicating that drugs, which are included in the Pharmaceutical Appendix, are duty-free while drugs not included in the Pharmaceutical Appendix are subject to duty.

The statement of administrative action and subsequent presidential proclamations (adding items to the Pharmaceutical Appendix) indicate that inclusion within the Pharmaceutical Appendix is the means by which duty-free treatment is to be extended to new pharmaceuticals. A product need not be considered a "drug" in order to be included in the Pharmaceutical Appendix. In fact, a "K" appears in the "Special" column adjacent to subheading 2914.69.90, HTSUS, the non-drug provision considered here.

Holding:

Coenzyme Q_{10} is classified in subheading, 2914.69.90, HTSUS, as "* * * quinones * * * Other * * * Other." This ruling revokes HQ 953627, dated July 26, 1993, and HQ 964415 revokes NY 864936, dated August 1, 1991.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF CUSTOMS RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF GAS POWERED DRILL-HAMMER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to the classification of gas powered drill-hammer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of a "pneumatic powered hammer drill", and is revoking any treatment previously accorded by the Customs Service to substantially identical transactions, under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on July 5, 2000, in Vol. 34, No. 27, of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 30, 2000.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Bornstein, General Classification Branch: (202) 927–2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on July 5, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 27, proposing to revoke one ruling, *NY* E87021, dated September 14, 1999, and revoke the tariff treatment pertaining to the tariff classification of a pneumatic, gas-powered hammer drill. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but which have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to have advised the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY E87021, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 963673. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 963673, revoking NY E87021, and revoking its treatment relating to tariff classification, is set forth as the "Attachment" to this document.

Dated: August 10, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, August 10, 2000.

CLA–2 RR:CR:GC 963673 BJB
Category: Classification
Tariff No. 8467.89.50

MR. ROBERT C. WATSON, III
LO INK SPECIALTIES
P.O. Box 220
Freeport, ME 04302–0220

Re: NY E87021 Revoked; Hand-held pneumatic, gas-powered hammer drill.

DEAR MR. WATSON:

In response to your letter of September 3, 1999, the Director of Customs National Commodity Specialist Division, New York, issued you NY E87021 on September 14, 1999, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a "pneumatic powered hammer drill." Your letter and documentation were forwarded to this office for reconsideration of the ruling.

We have reviewed NY E87021, and have determined that the classification set forth is in error. This ruling revokes NY E87021. We regret the delay in responding.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on July 5, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 27, proposing to revoke *NY E*87021, dated September 14, 1999, and to revoke the tariff treatment pertaining to the tariff classification of gas engine powered pneumatic drills. No comments were received in response to this notice.

Facts:

The merchandise consists of a rotary hammer drill ("pneumatic drill"), that incorporates a compressed air motor powered by a gas engine. The literature you provided, describes a "Model ER–382K G.P. 1½" Rotary Hammer." The pneumatic drill uses heavy-duty spline bits and accepts chipper, chisel and bull point hammer bits. The article has a D-type handle, safety clutch and free flight percussion hammer to absorb vibration and recoil. An auxiliary handle, depth gauge stop and steel carrying case are included. The pneumatic drill does not have an electric motor. The specifications you have provided describe the drive system as a pneumatic powered hammer mechanism and the engine type as an "air cooled, 2 cycle gasoline."

The pneumatic drill head is powered by a "free floating piston, which rotates the bit." You have stated that the pneumatic drill, "is used to drill holes in rock, asphalt and concrete," to "chip and break pavement" and to "pound rebar into the ground." In NY E87021, the pneumatic drill was determined to be classifiable under subheading 8508.10.00, HTSUS, which provides for "[e]lectromechanical tools for working in the hand, with self-contained electric motor; parts thereof: Drills of all kinds * * * Rotary:"

Issue:

Whether the pneumatic drill, is classifiable under subheading 8508.10.00, HTSUS, as an electro-pneumatic rotary and percussion hammer, under subheading 8467.11.50, HTSUS, as a hand-held tool, pneumatic, hydraulic or with self-contained nonelectric motor, and parts thereof, or under subheading 8467.89.50, HTSUS, as a hand-held tool, pneumatic, hydraulic or with self-contained nonelectric motor, and parts thereof * * * Other."

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, HTSUS, goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these

headings. Customs believes the ENs should always be consulted. *See* T.D. 98–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS headings under consideration are as follows:

8467	Tools for working in the hand, pneumatic, hydraulic or with self-contained nonelectric motor, and parts thereof:
	Pneumatic:
8467.11	Rotary type (including combined rotary-percussion):
8467.11.10	Suitable for metal working
8467.11.50	Other
* * * * * * *	
	Other tools:
8467.89	Other:
8467.89.10	Suitable for metal working
8467.89.50	Other
* * * * * * *	
8508	Electromechanical tools for working in the hand, with self-contained electric motor; parts thereof
* * * * * * *	
8508.10.00	Drills of all kinds
* * * * * * *	

Heading 8508, HTSUS, provides for "[e]lectromechanical tools for working in the hand, with self-contained electric motor; parts thereof[.]" The subject article is a hand-held tool. It is specifically designed with a gas engine. It uses compressed air to operate. It is not an electromechanical tool. It does not have a self-contained electric motor. The pneumatic drill is not classifiable under heading 8508, HTSUS, because it does not meet the terms provided therein.

The specifications you have provided demonstrate that the article is, in fact, a pneumatic hammer drill powered by an air-cooled, 2-cycle gasoline engine. Heading 8467, HTSUS, provides for "[t]ools for working in the hand, pneumatic, hydraulic or with self-contained nonelectric motor, and parts thereof: Pneumatic[.]" The pneumatic drill is classifiable according to the terms of this heading.

EN 84.67, page 1394, states in pertinent part:

> "This heading covers tools which incorporate a compressed air motor (or compressed air operated piston), an internal combustion motor or any other non-electric motor. * * *"

The pneumatic drill has no external source of compressed air. The "compressed air motor" is actually a cylinder with a piston inside it. Power is supplied to the cylinder and piston by a gas engine through a gear. When power is supplied, air in the cylinder is pressurized. This pressurization forces the piston forward to apply force activating whatever tool is being used. Compressed air is evacuated by valves permitting repetition of the process and causing the piston to move back and forth. This rapid back-and-forth movement causes a drill to rotate or a hammer to deliver blows.

Under heading 8467, HTSUS, we note that the subject article is *prima facie* classifiable under two subheadings: 8467.11.50 and 8467.89.50, HTSUS. Comparing the terms of these two subheadings, we find however, that each subheading describes part only of the components in this tool. Subheading 8467.11.50, HTSUS, describes the subject article's pneumatic feature, while subheading 8467.89.50, HTSUS, *prima facie* provides for only the gas engine feature.

GRI 6 states in part, that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, by appropriate substitution of terms, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable.

GRI 3(b) states that when goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows: "[m]ixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to GRI 3(a), shall be classified as if they consisted of the material or component which gives them their **essential character** * * *" [emphasis added].

In defining "essential character" for purposes of GRI 3(b), the Court of International Trade has looked to the role of the constituent parts and materials in relation to the use of the good, and found that the component that performs the "indispensable function" of the article, imparts the "essential character" of the good. *Mita Copystar America, Inc., v. United States*, 966 F. Supp. 1254 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995).

In the instant case, the pneumatic component of the subject article is essential to its operation. However, absent the article's gas engine the pneumatic component will not function. Thus, while each subheading, 8467.11.50 and 8467.89.50, describes an essential component of the article, neither includes both. Both the pneumatic component and the gas engine are indispensible to the drill's ability to function. Where the "essential character" of the subject article cannot be determined from the terms provided under two competing subheadings by reference to GRI 3(a) or GRI 3(b), GRI 3(c) should be applied at GRI 6. Thus, at GRI 3(c), the pneumatic drill is classifiable under the "[sub]heading which occurs last in numerical order among those which equally merit consideration." The pneumatic drill is, therefore, classifiable under subheading 8467.89.50, HTSUS.

Holding:

The pneumatic drill, is not provided for under subheading 8508.10.00, HTSUS, as an "[e]lectromechanical tool for working in the hand, with self-contained electric motor; parts thereof: Drills of all kinds * * * Other, including hammer drills." The pneumatic drill is classifiable under subheading 8467.89.50, HTSUS, which provides for "[t]ools for working in the hand, pneumatic, hydraulic or with self-contained nonelectric motor, * * *Other tools, other, other."

Effect on Other Rulings:

NY E87021, dated September 14, 1999, is hereby **REVOKED**. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF GUITAR TUNERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the tariff classification of guitar tuners.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS), of guitar tuners and any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before September 29, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 927–2391.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to prop-

erly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of guitar tuners. Although in this notice Customs is specifically referring to one ruling, PD C80205, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

Yamaha Corporation of America (Yamaha) is seeking to import electronic musical instrument tuners. Yamaha claims that the tuners should be classified in subheading 9027.80.4560, HTSUS, and cites a previous ruling it received, PD C80205, dated October 15, 1997, wherein Customs ruled that guitar tuners that measure or check pitch (frequency) of the sound produced by vibrating guitar strings were classifiable in this subheading, which provides in part, for instruments and apparatus for measuring or checking quantities of heat, sound or light. This ruling letter is set forth as "Attachment A" to this document. However, in NY 869148, dated December 19, 1991, Customs ruled that an instrument tuner used by musicians to tune both acoustic and electronic instruments was classifiable in subheading 9031.80.0080 [typographical error, should have read 9031.80.8000], HTSUS, which provides for measuring or checking instruments, appliances and machines not specified or included elsewhere in this chapter. This ruling letter is set forth as "Attachment B" to this document. Customs has reviewed the classification of these two ruling letters and has found the items to be substan-

tially similar and determined that the correct classification for all of these items is in subheading 9031.80.80, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke PD C80205, dated October 15, 1997, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964264 (see "Attachment C" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 10, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, October 15, 1997.

CLA-2-90:TC:A15:MLL C80205
Category: Classification
Tariff No. 9027.80.4560

MR. DENNIS HECK, IMPORT COMPLIANCE MANAGER
YAMAHA CORPORATION OF AMERICA
6600 Orangethorpe Avenue
P.O. Box 6600
Buena Park, CA 90622-6600

Re: The tariff classification of guitar tuners from Japan.

DEAR MR. HECK:

In your letter dated September 30, 1997 you requested a tariff classification ruling.

The YT series of guitar tuners are battery operated devices that measure or check the pitch (frequency) of the sound produced by vibrating guitar strings. The tuner models described in your brochure, YT1100, YT1200, YT2100, YT2200 and YT3000 compare the sound, received by a built-in microphone. to a selected standard and display the variance using VL meter type gauges or LED lights.

The applicable subheading for the guitar tuners will be 9027.80.4560, Harmonized Tariff Schedule of the United States (HTS), which provides for Instruments and apparatus for physical or chemical analysis * * *: Other instruments and apparatus: Other: Electrical: Other Physical analysis instruments and apparatus. The rate of duty will be free.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the Transaction.

ANGELA E. RYAN,
Acting Area Port Director,
Area Port of Washington. D.C.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, December 19, 1991.

CLA-2-90:N:N1:104-869143
Category: Classification
Tariff No. 9031.80.0080

MS. LAURA WEAST
C. MARTIN TAYLOR & COMPANY, INC.
P.O. Box 3067
2831 Talleyrand Avenue, Suite 208
Jacksonville, FL 32206-3496

Re: The tariff classification of an instrument tuner from South Korea.

DEAR MS. WEAST:

This classification decision under the Harmonized Tariff Schedule of the United States (HTS) is being issued in accordance the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

DATE OF INQUIRY:	November 22, 1991
ON BEHALF OF:	Micanopy Microsystems, Inc.
DESCRIPTION OF MERCHANDISE:	The "Chromatic Auto Tuner" is used by musicians to tune both acoustic and electronic instruments. The battery-operated, hand-held tuner can be recalibrated to any pitch with a touch of a button. It senses all twelve notes of the musical scale and has a full seven octave range. The unit is capable of separating musical tones from voices and extraneous noise.
HTS PROVISION:	Other measuring or checking instruments, appliances and machines.
HTS SUBHEADING:	9031.80.0080
RATE OF DUTY:	4.9% ad valorem
OTHER:	The sample will be returned as requested.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964264 KBR
Category: Classification
Tariff No. 9031.80.80.

DENNIS HECK, IMPORT COMPLIANCE MANAGER
YAMAHA CORPORATION OF AMERICA
6600 Orangethorpe Avenue, P.O. Box 6600
Buena Park, CA 90622-6600

Re: Revocation of PD C80205; Musical Instrument Tuners.

DEAR MR. HECK:

This is in regard to your letter dated May 12, 2000, requesting a ruling as to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of electronic musical instrument tuners, models YT 150, 240, 250 and TD series. You cite a previous ruling, PD C80205, issued to you on October 15, 1997, by the Port Director, Washington, D.C., concerning the classification for guitar tuners. We have reviewed the prior ruling and have determined that the classification provided is incorrect. This ruling revokes PD C80205 by providing the correct classification for musical instrument tuners.

Facts:

The merchandise consists of electronic musical instrument tuners. Some of the tuners are specifically designed to tune acoustic, electric or bass guitars; some tuners are designed specifically for wind instruments; and some tuners may be used for any instrument. All the tuners operate in a similar manner, allowing a musician to tune an instrument by having the tuner sense the pitch (frequency) of a note played by the instrument and displaying if it is sharp or flat on a LCD VU meter and LED lights.

The articles at issue in PD C80205 were battery operated guitar tuners that measured or checked the pitch (frequency) of the sound produced by vibrating guitar strings. The sound received by a built in microphone would be compared to a selected standard and a VU meter or LED lights would display the variance. Customs determined that the guitar tuner should be classified in subheading 9027.80.4560, HTSUS, which provides for Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof: Other instruments and apparatus: Other: Electrical: Physical analysis instruments and apparatus.

However, in NY 869148, dated December 19, 1991, Customs determined that battery operated, hand held tuners for both acoustic and electronic instruments, should be classified in subheading 9031.80.0080 [typographical error, should have read 9031.80.8000], HTSUS, which provides for Measuring or checking instruments, appliances and machines not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof: Other instruments, appliances and machines: Other.

Issue:

Whether instrument tuners are properly classifiable under heading 9027, HTSUS, or under heading 9031, HTSUS.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Cus-

toms practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are:

9027	Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; insturments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof:
* * * * * * *	
9027.80	Other instruments and apparatus:
* * * * * * *	
	Other:
9027.80.45	Electrical
and	
9031	Measuring or checking instruments, appliances and machines not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof:
* * * * * * *	
9031.80	Other instruments, appliances and machines:
* * * * * * *	
9031.80.80	Other.

Heading 9027, HTSUS, includes in particular "instruments and apparatus for measuring or checking quantities of heat, sound or light * * *." We do not find that heading 9027 applies to musical instrument tuners. A tuner measures pitch, frequency or vibration. We believe this to be more of a "quality" than a "quantity". Measuring a quantity of sound is done by measuring the decibels or loudness of the sound. A machine measuring the decibels an instrument produces would be classified within heading 9027, HTSUS.

Heading 9031, HTSUS, includes measuring or checking instruments. EN 18 for heading 9031, HTSUS, notably includes "Apparatus for measuring or detecting vibrations, expansion, shock or jarring, used on machines, bridges, dams, etc." Since an instrument turner measures the vibrations emanating from a musical machine, we find this EN to be instructive. In NY 869148 (December 19, 1991), Customs found that the correct classification for an instrument tuner was within subheading 9031.80.80, HTSUS. Likewise, we find that the proper classification for the imported electronic musical instrument tuners and wind instrument tuners instrument tuners is in subheading 9031.80.80, HTSUS.

Customs considered whether chapter 92, HTSUS, which provides for Musical instruments; parts and accessories of such articles, described the subject musical instrument tuners. However, we found that this chapter was not applicable. Chapter note 1(b) to chapter 92, states that "[m]icrophones, amplifiers, loudspeakers, headphones, switches, stroboscopes or other accessory instruments, apparatus or equipment of chapter 85 or 90, for use with but not incorporated in or housed in the same cabinet as the instruments of this chapter" will not be covered by chapter 92. Therefore, since the instrument tuners are articles which fall within chapter 90 but are separate articles not housed or incorporated within the instrument itself, we find chapter 92 to be inapplicable.

Holding:

The imported electronic musical instrument tuners and wind instrument tuners are classifiable in subheading 9031.80.80, HTSUS.

Effect on Other Rulings:

PD C80205, dated October 15, 1997, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF BUBBLE BATH

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of classification ruling letter and revocation of treatment relating to the classification of bubble bath.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of bubble bath and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed modification was published in the CUSTOMS BULLETIN of July 5, 2000, Vol. 34, No. 27. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after October 30, 2000.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202–927–1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In New York (NY) C89743, dated August 7, 1998, the classification of a product commonly referred to as Bubble Bath was determined to be in subheading 3402.20.5000, HTSUS. Since the issuance of that ruling,

Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error. The correct classification of the bubble bath is in subheading 3307.30.5000, HTSUS, under the provision for cosmetic or toilet preparations * * * perfumed bath salts and other bath preparations.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is modifying NY C89743, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 963171 (*see* "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

As stated in the proposed notice, this modification will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: August 14, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 14, 2000.

CLA–2 RR:CR:GC963171ptl
Category: Classification
Tariff No. 3307.30.5000

MS. HELEN NEWELL
POLARDREAMS INTERNATIONAL LTD.
1948 Highway 1 North
Fairfield, IA 52556

Re: "Kleanie Pals" Bubble Bath; Modification of NY C89743.

DEAR MS. NEWELL:

In NY C89743, which the Director of Customs National Commodity Specialist Division, in New York, issued to you on August 7, 1998, the bubble bath component of a child's bath product was classified in subheading 3402.20.5000, Harmonized Tariff Schedule of the United States (HTSUS) which provides for organic surface-active agents (other than soap); surface-active preparations, washing preparations and cleaning preparations, whether or not containing soap, other than those of heading 3401. We have reconsidered that ruling and determined that that portion is incorrect. The correct classification for that merchandise is in subheading 3307.30.5000, HTSUS, pursuant to the analysis set forth below.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY C89743 was published on July 5, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 27. No comments were received.

Facts:

The "Kleanie Pals" classified in NY C89743 consists of one stuffed dinosaur-like textile figure, measuring approximately seven inches high, and two pump bottles of bubble bath put up in retail packages (32 fl. oz.). All the articles will be put up for sale together in a single package.

In analyzing the merchandise, NY C89743 first determined that the "Kleanie Pal" was not a set for Customs classification purposes and that the components should be classified separately. The terry cloth dinosaur-like figure, stuffed primarily with bean fill, was determined to be a stuffed toy and was classified in subheading 9503.49.0025, HTSUS.

The "Kleanie Pals" bubble bath, containing water, sodium laureth sulfate, lauramide DEA, sodium lauryl sulfoacetate, tea-peg-3 cocamide sulfate, disodium cocamido mea-sulfosuccinate, sodium chloride, fragrance, oleamide DEA, citric acid, methylchloroisothiazolinone, (and) methylisthiazolinone, was classified in subheading 3402.20.5000, HTSUS, which provides for organic surface-active agents (other than soap); surface-active preparations, washing preparations and cleaning preparations, whether or not containing soap, other than those of heading 3401.

Issue:

What is the classification of "Kleanie Pals" bubble bath?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

The HTSUS headings under consideration are as follows:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:

* * * * * * *

3307.30	Perfumed bath salts and other bath preparations:
3307.30.1000	Bath salts, whether or not perfumed
3307.30.5000	Other
3402	Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 3401:
	Organic surface-active agents, whether or not put up for retail sale:
3402.20	Preparations put up for retail sale:
3402.20.1000	Containing any aromatic or modified aromatic surface-active agent
3402.20.5000	Other

The Chapter Notes to Chapter 34, HTSUS, state: "1. This chapter does not cover: * * * (c) Shampoos, dentifrices, shaving creams and foams or bath preparations, containing soap or other organic surface-active agents (heading 3305, 3306 or 3307)." Because the "Kleanie Pals" bubble bath is a bath preparation containing organic surface-active agents, it is excluded by this Note from classification in heading 3402.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 33.07 (III) provides: This heading covers: "Bath preparations, such as perfumed bath salts and preparations for foam baths, whether or not containing soap or other organic surface-active agents (see Note 1(c) to Chapter 34)."

The Chapter Note and the EN, when read together, clearly indicate that the proper classification for the "Kleanie Pals" bubble bath preparation is in heading 3307.

Holding:

"Kleanie Pals" bubble bath preparation is classified in subheading 3307.30.5000, HTSUS, which provides for: Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: [p]erfumed bath salts and other bath preparations: [b]ath salts, whether or not perfumed; [o]ther.

NY C89743 dated August 7, 1998, is hereby modified as set forth herein. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF STEEL SHOE HORN

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of classification ruling letter and revocation treatment relating to the classification of steel shoe horns.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of steel shoe horns and revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before September 29, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: General Classification Branch, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Bornstein, General Classification Branch, (202) 927–2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to prop-

erly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of steel shoe horns. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter NY D81370, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule Of The United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY D81370, dated August 31, 1998, the classification of a product referred to as a steel shoe horn, was determined to be classifiable in subheading 8205.59.80, HTSUS. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, Customs has had an opportunity to review the classification of this merchandise and has determined that the classification set forth is in error.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY D81370, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 963730, which is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: August 15, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, August 31, 1998.

CLA-2-82:RR:NC:115 D81370
Category: Classification
Tariff No. 8214.20.3000, 8205.59.8000,
8203.20.2000, 8211.93.0030, August 28, 1998.

MS. SHELIA ANDREWS
DILLARD DEPARTMENT STORES
11701 Otter Creek Road South
Mabelvale, AR 72103

Re: The tariff classification of manicure sets from Korea.

DEAR MS. ANDREWS:

In your letter dated August 13, 1998 you requested a tariff classification ruling.

Three sample manicure sets were submitted for classification. Style number 1123BW which consists of toe nail clippers, finger nail clippers, finger nail file, cuticle scissors, cuticle pusher, pen knife w/knife with finger nail cleaner and bottle opener in a polyester laminated PVC case. Style number 1113SK which consists of tweezers, toe nail clippers, finger nail clippers, cuticle scissors, pen knife w/knife with finger nail cleaner and bottle opener in a leather case. Style number 9770BW which consists of tweezers, toe nail clippers, finger nail clippers, cuticle scissors (one round edge; one sharp edge), finger nail file, pen knife w/knife with finger nail cleaner and bottle opener, steel shoe horn, plastic comb, two sided mirror in a polyester laminated PVC case.

This office considered the possibility of classifying the three manicure sets under the provisions of 8214.20.30 and 8214.20.60 which provide for manicure sets depending on type of case. However, the addition of other items in the sets such as pen knives w/knives, comb, bottle opener and mirror remove the sets from consideration. With respect to the issue of "sets" under the General Rules of Interpretation 3(b), relevant Explanatory Notes under the caption Rule 3(b) state:

> (X) For purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
>
> (a) consist of at least two different articles which are, prima facie classifiable in different headings.
>
> (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
>
> (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

It is the opinion of this office that the three manicure sets meet criteria (a) and (c) of GRI 3(b) rule but does not meet criteria (b). General personal grooming is neither a particular need nor a specific activity for purposes of criteria (b). Pen knife w/ knife and bottle opener does not relate to cosmetic care or grooming of any kind. All the items will be separately

classified with the exception of the cases. GRI 5 states that "Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character".

The applicable subheading for the toe nail clippers, finger nail clippers, finger nail file, cuticle pusher, will be 8214.20.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for cuticle or cornknives, cuticle pushers nail files, nailcleaners, nail nippers and clippers, all the foregoing used for manicure or pedicure purposes, and parts thereof. The rate of duty will be 4.8% ad valorem.

The applicable subheading for the cuticle scissors, will be 8213.00.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for Scissors, tailors' shears and similar shears, and blades and other base metal parts thereof: other. The rate of duty will be 7.2 cents each + 7.2% ad valorem.

The applicable subheading for the tweezers, will be 8203.20.2000, Harmonized Schedule of the United States (HTS), which provides for Tweezers. The rate of duty will be 4.8% ad valorem.

The applicable subheading for the pen knife w/knife-bottle opener-finger nail combination and pen knife alone will be 8211.93.0030, Harmonized Schedule of the United States (HTS), which provides for Pen knives, pocket knives and other knives which have folding blades. The rate of duty will be 3 cents each + 5.4% ad valorem.

The applicable subheading for the plastic comb, will be 9615.11.2000, Harmonized Schedule of the United States (HTS), which provides for Combs of hard rubber or plastics: Valued over $4.50 per gross. The rate of duty will be 5.7% ad valorem.

The applicable subheading for the steel shoe horn will be 8205.59.8000, Harmonized Schedule of the United States (HTS), which provides for Household tools and parts thereof: Of iron or steel: other. The rate of duty will be 4% ad valorem.

The applicable subheading for the two sided mirror will be 7009.92.1000, Harmonized Schedule of the United States (HTS), which provides for Glass mirrors, whether or not framed, including rear view mirrors: Framed: not over 929 cm2 in reflecting area. The rate of duty will be 7.8% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212–466–5487.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA–2 RR:CR:GC 963730 BJB
Category: Classification
Tariff No. 8205.59.55

MS. SHELIA ANDREWS
CUSTOMS COMPLIANCE MANAGER
DILLARD DEPARTMENT STORES, INC.
11701 Otter Creek Road South
Mabelvale, AR 72103

Re: Steel shoe horn; Modification of NY D81370.

DEAR MS. ANDREWS:

This is in reference to NY D81370, issued to you on August 31, 1998, by the Customs National Commodity Specialist Division, New York. In that ruling, three sample manicure sets were submitted for classification. One of the sets, Style #9770BW, included a steel shoe horn. The steel shoe horn was determined to be separately classifiable under subheading 8205.59.80, Harmonized Tariff Schedule Of The United States (HTSUS).

We have reviewed the decision in NY D81370 and have determined that the classification of the steel shoe horn is in error. This ruling modifies NY D81370 with respect to this article and sets forth the correct classification.

Facts:

The merchandise consists of a steel metal shoe horn. The shoe horn is a hand-held, curved piece of metal, used as an aid in putting on shoes. An individual inserts the broad curved end of the shoe horn at the back of the aperture located on a shoe, as one inserts a foot, toes first into the shoe aperture, the individual is aided in placing the foot into the shoe as the heel glides down the curved surface of the shoe horn into the shoe cavity. In your letter, dated August 13, 1998, requesting a tariff classification ruling, you claimed that the steel shoe horn, was part of a manicure set identified as Style # 9770BW. In NY D81370, dated August 31, 1998, Customs determined that the inclusion of items such as pen knives with knives, combs, bottle opener and mirrors removed the merchandise submitted with the three proposed manicure sets, from consideration as sets. The steel shoe horn was separately classified under subheading 8205.59.80, HTSUS, which provides for "[h]ousehold tools and parts thereof: [o]f iron or steel: other."

Issue:

Whether the subject steel shoe horn, is classifiable under subheading 8205.59.80, HTSUS, as a handtool made of steel, or pursuant to subheading 8205.59.55, HTSUS, as "[h]andtools * * *: Other handtools (including glass cutters) and parts thereof: * * *: Other: * * * Other: * * * Other[.]"

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under General Rule of Interpretation (GRI) 1, HTSUS, goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. *See* T.D. 98–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS subheadings under consideration are as follows:

8205	Handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof:

*	*	*	*	*	*	*
8205.59	Other:					
	Other:					
	Of iron or steel:					
*	*	*	*	*	*	*
8205.59.55	Other					
*	*	*	*	*	*	*
8205.59.80	Other * * *					
*	*	*	*	*	*	*

Heading 8205, HTSUS, covers, in pertinent part, handtools, not elsewhere specified or included. EN 82.05, states that this "heading covers all hand tools **not included** in other headings of this Chapter or elsewhere in the Nomenclature (see the General Explanatory Notes to this Chapter), together with certain other tools or appliances specifically mentioned in the title. It includes a large number of hand tools (including some with simple hand-operated mechanisms such as cranks, ratchets or gearing)." EN 82.05 (E)(1), notes, in relevant part that, "**[o]ther hand tools**" includes: (1) A number of household articles, including * * * bottle openers, simple can openers, * * * [and] shoe horns[.]" (Emphasis in the original)." Given that the steel shoe horn is a hand-tool not more specifically described in any other heading, it is provided for in heading 8205, HTSUS.

In NY D81370, Customs determined that "all the items [included in the 3 proposed sample sets submitted] w[ould] be separately classified with the exception of the [carrying] cases." (NY D81370, August 31, 1998). The shoe horn was determined classifiable under subheading 8205.59.80, HTSUS, based upon the mistaken understanding that it was of an "other metal." In fact, the shoe horn is of steel, as stated in your August 13, 1998 letter. Thus the shoe horn, entirely made of steel, is not described by subheading 8205.59.80, HTSUS, which relates to handtools not made of iron or steel, copper or aluminum.

The steel shoe horn at issue is classifiable at subheading 8205.59.55, HTSUS, within "[h]andtools * * *: Other handtools (including glass cutters) and parts thereof: Other: Other: Of iron or steel: * * * Other[.]"

Holding:

Under the authority of GRI 1, HTSUS, applied to the subheading level by GRI 6, HTSUS, the subject steel shoe horn, a one-piece unit with no interchangeable pieces, is provided for in heading 8205, HTSUS, and is classifiable separately from the other articles reviewed in NY D81370, under subheading 8205.59.55, HTSUS, as "[h]andtools * * *: Other handtools (including glass cutters) and parts thereof: Other: Other: Of iron or steel: * * * Other[.]"

NY D81370, dated August 31, 1998, **is modified** with respect to the steel shoe horn as set forth herein. The classification of the other articles are not affected by this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF "BIG MOUTH BILLY BASS" SINGING FISH

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of a "Big Mouth Billy Bass" singing fish.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a "Big Mouth Billy Bass" singing fish and any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before September 29, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: John G. Black, General Classification Branch (202) 927–1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for us-

ing reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a "Big Mouth Billy Bass" singing fish. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) F82965 dated March 3, 2000, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY F82965, dated March 3, 2000, Customs ruled that a "Big Mouth Billy Bass" singing fish was classified in subheading 8943.89.9695, HTSUS, which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter, parts thereof: Other machines and apparatus: Other: Other: Other, Other." This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, Customs has had a chance to reconsider the classification of this merchandise based on the information as to use provided by the importer and from other sources and has determined that the ruling is in error. We have determined that this "Big Mouth Billy Bass" singing fish is within the class of practical joke articles and is properly classified in subheading 9505.90.2000, HTSUS, as "Festive, carnival or other entertainment articles, including magic

tricks and practical joke articles; parts and accessories thereof: Other: Magic tricks and practical joke articles; parts and accessories thereof."

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY F82965 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964171 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to modify or revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 15, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 6, 2000.

CLA–2–85:RR:NC:1:112 F82965
Category: Classification
Tariff No. 8543.89.9695

MR. DARRELL SEKIN JR.
DJS INTERNATIONAL SERVICES, INC.
P.O. Box 612785
DFW Airport, TX 75261

Re: The tariff classification of a singing fish from China.

DEAR MR. SEKIN:

In your letter dated February 4, 2000, on behalf of Gemmy Industries, Inc., you requested a tariff classification ruling.

As indicated by the submitted sample, the singing fish, identified as "Big Mouth Billy Bass" is a battery operated representation of a fish mounted on a plastic plaque. When activated, the fish "sings" excerpts from several songs while the head and tail move back and forth.

The applicable subheading for "Big Mouth Billy Bass" will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical machines and apparatus, * * *, not specified or included elsewhere in Chapter 85, HTS. The rate of duty will be 2.6 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212–637–7049.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA–2 RR:CR:GC 964171 JGB
Category: Classification
Tariff No. 9505.90.20

MR. ROBERT T. GIVENS
GIVENS AND ASSOCIATES, PLLC
950 Echo Lane, Suite 360
Houston, TX 77024–2788

Re: "Big Mouth Billy Bass"; Not Toys; Not Other Electrical Machine and Apparatus; Practical Joke Article.

DEAR MR. GIVENS:

This letter is in response to your request of March 30, 2000, on behalf of your client, Gemmy Industries Corp., requesting reconsideration of New York Ruling Letter (NY) F82965, issued to DJS International Services, Inc., on March 3, 2000, on behalf of your client, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of an article marketed as "Big Mouth Billy Bass." A sample was submitted with your request.

This letter is to inform you that F82965 no longer reflects the view of the Customs Service concerning the classification of the "Big Mouth Billy Bass" singing fish and that the following reflects our position for this article.

Facts:

The importer states that the sample is designed to look like a real fish mounted on a trophy board. The fish, when activated, moves and sings its two alternative songs in "synchro-motion." As a song begins, the fish wags its tail in time with the music. As the song progresses, the fish raises its head from the mounting, faces its viewers and moves its mouth in almost perfect synchrony with the song and music, such that it appears that the fish is actually singing the songs, albeit remaining attached in part to its mounting. The singing is activated manually by a red button on the plaque below the fish, by flipping a switch on the back, or by use of a motion sensor. The fish, measuring about 13 inches in length and about 5½ inches in height is constructed of a natural-looking plastic material colored to look like a real bass. The brown trophy board, measuring about 9 inches by 13 inches, upon which the fish is mounted is colored to look like wood.

The article is powered by batteries or, in the alternative, a by 6-volt DC, 120 V A/C adapter which is provided with the unit and can be plugged into the adapter jack located on the lower outside corner of the trophy board. The plaque is to be hung on the wall or placed on a level surface using the built-in easel as a stand. In use, the owner would invite an unaware person to view his fishing trophy. If the button is to be used, while the viewer approaches the fish, the owner would press the button to activate the article. In the alternative, the owner might direct someone to walk over to the wall to see the trophy fish and as the person approaches range of the motion sensor, the fish will begin its antics. While the user is expected to be startled, surprised, mystified, or amused by the article, those sentiments would not be likely at subsequent performances of the fish. The amusement appears to be limited to having someone else be surprised by the fish and not by watching it over and over again.

The article contains an electric motor to move the fish and an electronic chip and related electronic sound apparatus that contains and amplifies the songs "Don't Worry Be Happy" and "Take Me to the River" sung by the fish.

Issue:

Whether the "Big Mouth Billy Bass" singing fish is classifiable within heading 9503 as toys; in heading 9505 as practical joke articles; in heading 8543 as other electrical machines and apparatus; or elsewhere in the HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tar-

iff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Customs ruling of March 3, 2000, NY F82965, classified the article in subheading 8543.89.9695, HTSUS. This subheading provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter, parts thereof: Other machines and apparatus: Other: Other: Other, Other." Note 1(p) to Section XVI, which includes Chapter 85, HTSUS, which, in turn, covers heading 8543, provides that this section does not cover articles of Chapter 95. Thus, if the Big Mouth Billy Bass is classifiable under headings 9503 or 9505, then note 1(p) to Section XVI precludes classification under heading 8543 and necessitates classification under Chapter 95.

Two headings worthy of additional consideration in this case are heading 9503 providing for toys and heading 9505 providing for, among other things, practical joke articles. With regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for amusement of children or adults." The ENs to heading 9503 indicate that among other toys, the heading covers toys representing animals or nonhuman creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters). It has been Customs position that the amusement requirement means that toys should be designed and used principally for amusement. See Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article. Although there is an element of amusement in this article, it also functions to trick or surprise unsuspecting individuals, in other words, to put the individual at a humorous disadvantage. In this case, since the article will not be principally used as a toy, it is not classifiable within heading 9503. In our opinion, the article does not provide the manipulative play value or frivolous entertainment characteristic of toys. While toys are usually played with at some length, this article loses its surprise value after the first use.

Heading 9505, HTSUS, provides, *inter alia*, for practical joke articles. The EN to 9505 indicates that the heading includes:

> (B) Conjuring tricks and novelty jokes, e.g., packs of cards, tables, screens and containers, specially designed for the performance of conjuring tricks; novelty jokes such as sneezing powder, surprise sweets, water-jet button-holes and "Japanese flowers."

In determining whether merchandise qualifies as a practical joke article, Customs has utilized the standard articulated in *Parksmith Corporation v. United States*, 67 Cust. Ct. 405, 408 C.D. 4304 (1970). In that decision, the court reviewed several dictionary and court case definitions of the term "practical joke," determining that a practical joke article is one which causes humor by "somehow placing an individual at a disadvantage through a trick or prank."

Accordingly, in Headquarters Rulings Letters (HQ) 953187, issued August 5, 1993; 953188, issued May 18, 1993; and 089529, issued October 1, 1991, rubber squirt figures which when squeezed emitted water from the figure's mouth and Weepy the Wee Wee consisting of a figure which, when his pants were pulled down, would squirt water out from a hole in the front pelvic area, were classified as practical joke articles. In these decisions, Customs maintained that the merchandise would surprise and/or trick an individual, placing them at a humorous disadvantage. It is our opinion that the subject merchandise, also serves to surprise and/or trick an individual and place one at a humorous disadvantage. Pursuant to the applicable EN and the definition articulated in the *Parksmith* case, the Big Mouth Billy Bass singing fish qualifies as a practical joke article and is classified in Heading 9505, HTSUS.

Holding:

NY F82965 is revoked.

The "Big Mouth Billy Bass" singing fish is properly classified in subheading 9505.90.20, HTSUS, the provision for festive, carnival or other entertainment articles, other, magic tricks and practical joke articles.

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